

CENTER FOR DISABILITY ACCESS
Chris Carson, Esq., SBN 280048
Ray Ballister, Jr., Esq., SBN 111282
Phyl Grace, Esq., SBN 171771
Dennis Price, Esq., SBN 279082
Mail: PO Box 262490
San Diego, CA 92196-2490
Delivery: 9845 Erma Road, Suite 300
San Diego, CA 92131
(858) 375-7385; (888) 422-5191 fax
phylg@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Denise Kish,

Plaintiff,

v.

Skate Ranch, a California
Corporation; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Denise Kish complains of Defendants Skate Ranch, a California Corporation; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. She suffers from multiple sclerosis and uses a wheelchair for mobility.

2. Defendant Skate Ranch owned the real property located at or about 34225 Rancho California Rd., Temecula, California, in October 2017.

3. Defendant Skate Ranch owned the real property located at or about 34225 Rancho California Rd., Temecula, California, in December 2017.

1 4. Defendant Skate Ranch owns the real property located at or about
2 34225 Rancho California Rd., Temecula, California, currently.

3 5. Defendant Skate Ranch owned Maurice Car'rie Winery located at or
4 about 34225 Rancho California Rd., Temecula, California, in October 2017.

5 6. Defendant Skate Ranch owned Maurice Car'rie Winery located at or
6 about 34225 Rancho California Rd., Temecula, California, in December
7 2017.

8 7. Defendant Skate Ranch owns Maurice Car'rie Winery ("Winery")
9 located at or about 34225 Rancho California Rd., Temecula, California,
10 currently.

11 8. Plaintiff does not know the true names of Defendants, their business
12 capacities, their ownership connection to the property and business, or their
13 relative responsibilities in causing the access violations herein complained of,
14 and alleges a joint venture and common enterprise by all such Defendants.
15 Plaintiff is informed and believes that each of the Defendants herein,
16 including Does 1 through 10, inclusive, is responsible in some capacity for the
17 events herein alleged, or is a necessary party for obtaining appropriate relief.
18 Plaintiff will seek leave to amend when the true names, capacities,
19 connections, and responsibilities of the Defendants and Does 1 through 10,
20 inclusive, are ascertained.

21
22 **JURISDICTION & VENUE:**

23 9. This Court has subject matter jurisdiction over this action pursuant to
24 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
25 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

26 10. Pursuant to supplemental jurisdiction, an attendant and related cause
27 of action, arising from the same nucleus of operative facts and arising out of
28 the same transactions, is also brought under California's Unruh Civil Rights

1 Act, which act expressly incorporates the Americans with Disabilities Act.

2 11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
3 founded on the fact that the real property which is the subject of this action is
4 located in this district and that Plaintiff's cause of action arose in this district.

5
6 **FACTUAL ALLEGATIONS:**

7 12. Plaintiff went to the Winery in October 2017 and December 2017 to
8 buy wine.

9 13. The Winery is a facility open to the public, a place of public
10 accommodation, and a business establishment.

11 14. Wine tasting counters are one of the facilities, privileges and advantages
12 offered by Defendants to patrons of the Winery.

13 15. Wine is served at a counter or bar for consumption by customers either
14 seated on stools or standing at the counter or bar but there is no portion of the
15 counter that is 34 inches in height or less.

16 16. In fact, the counter or bar used for wine tasting is located some 48.5
17 inches above the finish floor.

18 17. Currently, there is no counter or bar that has a portion that is 34 inches
19 in height or less.

20 18. Restrooms are one of the facilities, privileges and advantages offered by
21 Defendants to patrons of the Winery.

22 19. Unfortunately, the height of the toilet in the women's restroom, when
23 measured to the top of the toilet seat, is about 15.5 inches.

24 20. Because of the barriers at the Winery, plaintiff purchased wine and left
25 the facility without being able to stay and enjoy the facilities.

26 21. Plaintiff personally encountered these barriers.

27 22. These inaccessible conditions denied the plaintiff full and equal access
28 and caused her difficulty, discomfort, and embarrassment.

1 23. Plaintiff plans to return and patronize the Winery but will be deterred
2 from visiting until the defendants remove the barriers.

3 24. The Defendants have failed to maintain in working and useable
4 conditions those features required to provide ready access to persons with
5 disabilities.

6 25. The barriers identified above are easily removed without much
7 difficulty or expense. They are the types of barriers identified by the
8 Department of Justice as presumably readily achievable to remove and, in fact,
9 these barriers are readily achievable to remove. Moreover, there are numerous
10 alternative accommodations that could be made to provide a greater level of
11 access if complete removal were not achievable.

12 26. Plaintiff is and has been deterred from returning and patronizing the
13 Winery because of her knowledge of the barriers that exist. Plaintiff will,
14 nonetheless, return to assess ongoing compliance with the ADA and will
15 return to patronize the Winery as a customer once the barriers are removed.

16 27. Given the obvious and blatant nature of the barriers and violations
17 alleged herein, the plaintiff alleges, on information and belief, that there are
18 other violations and barriers on the site that relate to her disability. Plaintiff
19 will amend the complaint, to provide proper notice regarding the scope of this
20 lawsuit, once she conducts a site inspection. However, please be on notice that
21 the plaintiff seeks to have all barriers related to her disability remedied. See
22 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
23 encounters one barrier at a site, she can sue to have all barriers that relate to
24 his disability removed regardless of whether she personally encountered
25 them).

26 28. Additionally, on information and belief, the plaintiff alleges that the
27 failure to remove these barriers was intentional because: (1) these particular
28 barriers are intuitive and obvious; (2) the defendants exercised control and

1 dominion over the conditions at this location and, therefore, the lack of
 2 accessible facilities was not an “accident” because had the defendants
 3 intended any other configuration, they had the means and ability to make the
 4 change.

5
 6 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 7 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 8 Defendants.) (42 U.S.C. section 12101, et seq.)

9 29. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 10 again herein, the allegations contained in all prior paragraphs of this
 11 complaint.

12 30. Under the ADA, it is an act of discrimination to fail to ensure that the
 13 privileges, advantages, accommodations, facilities, goods and services of any
 14 place of public accommodation is offered on a full and equal basis by anyone
 15 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 16 § 12182(a). Discrimination is defined, inter alia, as follows:

- 17 a. A failure to make reasonable modifications in policies, practices,
 18 or procedures, when such modifications are necessary to afford
 19 goods, services, facilities, privileges, advantages, or
 20 accommodations to individuals with disabilities, unless the
 21 accommodation would work a fundamental alteration of those
 22 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 23 b. A failure to remove architectural barriers where such removal is
 24 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 25 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
 26 Appendix “D.”
- 27 c. A failure to make alterations in such a manner that, to the
 28 maximum extent feasible, the altered portions of the facility are

1 readily accessible to and usable by individuals with disabilities,
2 including individuals who use wheelchairs or to ensure that, to the
3 maximum extent feasible, the path of travel to the altered area and
4 the bathrooms, telephones, and drinking fountains serving the
5 altered area, are readily accessible to and usable by individuals
6 with disabilities. 42 U.S.C. § 12183(a)(2).

7 31. Where food or drink is served at counters exceeding 34 inches in height
8 for consumption by customers seated on stools or standing at the counter, a
9 portion of the main counter which is 60 inches in length minimum shall be
10 provided that is no higher than 34 inches above the floor or service shall be
11 available at accessible tables within the same area. 1991 Standards § 5.2 and
12 4.32; 2010 Standards § 226.1. If seating is provided for persons in
13 wheelchairs at the counter or bar, there must be knee clearance for wheelchair
14 users measuring at least 27 inches high, 30 inches wide, and 19 inches deep.
15 1991 Standards § 4.32.3; 2010 Standards § 306.3 (the 2010 Standards
16 actually require a different depth).

17 32. Here the failure to provide an accessible counter/bar is a violation of the
18 law.

19 33. The height of water closets (toilets) must be from 17 inches to 19 inches,
20 measured to the top of the toilet seat.

21 34. Here the toilet seat is too low and does not comply with the ADA.

22 35. The failure to provide an accessible entrance is a violation of the law.

23 36. A public accommodation must maintain in operable working condition
24 those features of its facilities and equipment that are required to be readily
25 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

26 37. Here, the failure to ensure that the accessible facilities were available
27 and ready to be used by the plaintiff is a violation of the law.

28 38. Given its location and options, plaintiff will continue to desire to

1 patronize the Winery but she has been and will continue to be discriminated
2 against due to the lack of accessible facilities and, therefore, seeks injunctive
3 relief to remove the barriers.

4
5 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
6 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
7 Code § 51-53.)

8 39. Plaintiff repleads and incorporates by reference, as if fully set forth
9 again herein, the allegations contained in all prior paragraphs of this
10 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
11 that persons with disabilities are entitled to full and equal accommodations,
12 advantages, facilities, privileges, or services in all business establishment of
13 every kind whatsoever within the jurisdiction of the State of California. Cal.
14 Civ. Code §51(b).

15 40. The Unruh Act also provides that a violation of the ADA, or of California
16 state accessibility regulations, is a violation of the Unruh Act. Cal. Civ. Code,
17 § 51(f); Arnold v. United Artists Theatre Circuit, Inc., 866 F.Supp. 433, 439
18 (N.D.Cal.1994).

19 41. Defendants’ acts and omissions, as herein alleged, have violated the
20 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
21 rights to full and equal use of the accommodations, advantages, facilities,
22 privileges, or services offered.

23 42. Defendants’ acts and omissions, as herein alleged, have also violated
24 the Unruh Act by denying, or aiding or inciting the denial of, Plaintiff’s right to
25 equal access arising from the provisions of the ADA (see Plaintiff’s First Cause
26 of Action).

27 43. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
28 discomfort or embarrassment for the plaintiff, the defendants are also each

1 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
2 (c).)

3
4 **PRAYER:**

5 Wherefore, Plaintiff prays that this Court award damages and provide
6 relief as follows:

7 1. For injunctive relief, compelling Defendants to comply with the
8 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
9 plaintiff is not invoking section 55 of the California Civil Code and is not
10 seeking injunctive relief under the Disabled Persons Act at all.

11 2. Damages under the Unruh Civil Rights Act, which provides for actual
12 damages and a statutory minimum of \$4,000.

13 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
14 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

15
16 Dated: April 9, 2018

CENTER FOR DISABILITY ACCESS

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19 By:



20
21 Chris Carson, Esq.
22 Attorney for plaintiff
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